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One Hundred Eighteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515

October 19, 2023

Secretary Antony Blinken
U.S. Department of State
Harry S. Truman Building
2201 C Street N.W.
Washington, D.C. 20520

Ambassador Beth Van Schaack
Office of Global Criminal Justice
U.S. Department of State
Harry S. Truman Building
2201 C Street N.W.
Washington, D.C. 20520

Dear Secretary Blinken and Ambassador Van Schaack,

On October 7th, 2023, Hamas committed acts of genocide, crimes against humanity, and war crimes against the Jewish people and the State of Israel. Hamas' actions were not just acts of "terrorism" or "terrorist attacks."¹ Rather, the assault was carried out by a genocidal organization and comprised nothing less than the full range of atrocity crimes under international law.² I write to request that the Department of State and the Office of Global Criminal Justice – working in coordination with the Office of the Legal Advisor – consider a formal determination of the same.³

The elements of these atrocity crimes are well known. Genocide comprises acts – including killing, causing serious bodily or mental harm, or forcibly transferring children – taken with intent

¹ The White House, *Remarks by President Biden on the Terrorist Attacks in Israel* dated 10 Oct. 2022.

² See Public Statement by International Law Experts, ([available here](#)); Verfassungsblog, *Open letter from Israeli international law experts* dated 9 Oct. 2023; Times of Israel, *Hamas actions are war crimes, could constitute genocide – international law experts* dated 15 Oct. 2023; Hebrew University of Jerusalem, *Letters to the Presidents of Harvard University and Stanford University* dated 12 Oct. 2023.

³ Since the Holocaust, the United States has made eight genocide determinations. See Department of State, *Genocide, Crimes Against Humanity and Ethnic Cleansing of Rohingya in Burma* dated 21 Mar. 2022. The Department of State also has determined that Russian forces and officials committed crimes against humanity in Ukraine. Department of State, *Crimes Against Humanity in Ukraine* dated 18 Feb. 2023. Such determinations similarly are warranted regarding Hamas' assault on Israel.

to destroy, *in whole or in part*, a national, ethnical, racial or religious group, as such.⁴ In this regard, the International Court of Justice has observed that “the prohibition of genocide has the character of a peremptory norm [of international law] (*jus cogens*),”⁵ from which no derogation is permitted.

Crimes against humanity comprise acts – including murder, extermination, rape, forcible transfer of population, or acts causing great suffering to mental or physical health – committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.⁶ War crimes comprise grave breaches of the Geneva Conventions and include taking of hostages, rape and sexual slavery, intentionally directing attacks against a civilian population, attacking or bombarding, towns, villages, dwellings or buildings which are undefended and which are not military objectives, and committing outrages upon personal dignity, in particular humiliating and degrading treatment.⁷

Hamas’ assault on the Jewish people and the State of Israel began when thousands of rockets rained down on Israel. Then, more than 1,500 members of Hamas’ death squads purged Israeli villages – killing over 1,400 people, injuring thousands of others, taking at least 200 hostages, and leaving behind a trail of unspeakable horror.

But we must speak of it – *these atrocities cannot be justified, ignored, or denied*. Hamas’ acts of genocide, crimes against humanity, and war crimes included:

- Murdering civilians in their cars, including women, children, and entire families;
- Assaulting kibbutzim, killing residents and burning homes;
- Holding captive and massacring families in their homes;
- Executing civilians forced from shelter by fire, grenades, or otherwise;
- Forcing hostages to lure other civilians out of their homes;
- Executing babies and children, including in their beds and cars;
- Murdering the elderly, and posting the evidence on the social media of those killed;
- Slaughtering more than 250 civilians attending a music festival, at point-blank range, and as they tried to escape;
- Capturing, holding hostage, and raping women;

⁴ Convention on the Prevention and Punishment of the Crime of Genocide, Art. 2; Rome Statute, Art. 6; Statute of the International Criminal Tribunal for the Former Yugoslavia, Art. 4; Statute of the International Criminal Tribunal for Rwanda, Art. 2.

⁵ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*); Judgment dated 3 Feb. 2015, para. 87.

⁶ Arrest Warrant of 11 April 2000 (*Democratic Republic of the Congo v. Belgium*); Judgment dated 14 Feb. 2002, paras. 62-65; Rome Statute, Art. 7; Draft Articles on Prevention and Punishment of Crimes Against Humanity, Art. 2.

⁷ See Geneva Conventions of 12 Aug. 1949; Rome Statute, Art. 8.

- Kidnapping children;
- Parading and spitting on deceased victims in the streets;
- Mutilating bodies of civilians and soldiers;
- Burning men, women, and children alive;
- Stripping hostages and holding them at gunpoint;
- And numerous other atrocities.⁸

Following the horrific assault, Hamas – leadership and rank-and-file alike – celebrated. Moreover, much of the evidence of these atrocities was filmed *by Hamas*.

And Hamas undoubtedly carried out these atrocity crimes with the requisite intent. Indeed, “Hamas is an organization devoted to ending Jewish history” and its founding documents are “a frank and open call for genocide.”⁹ The 1988 Hamas Covenant calls for “the Jews . . . [to be] vanquished,” and proclaims that the “struggle against the Jews is very great and very serious,” that “[t]he Day of Judgement will not come about until Moslems fight the Jews (killing the Jews),” that “Moslems . . . [should] come and kill the Jew,” and that “Israel will exist . . . until Islam will obliterate it.”¹⁰ The 2017 Hamas Document of General Principles & Policies also confirms that Hamas’ “conflict is with the Zionist project,” that “the Zionist movement must disappear from Palestine,” and that “[r]esisting . . . with *all means and methods* is a legitimate right . . . [especially] armed resistance.”¹¹

Further, documents recovered from the Hamas death squads demonstrate that the assault was meticulously planned to devastate kibbutzim, schools, and youth centers, and to “kill as many people as possible.”¹² Hamas thus plainly intended to destroy “a substantial part”¹³ of the Jewish people and the State of Israel. Under such circumstances, the requisite intent for these atrocity crimes “is the only inference that could reasonably be drawn from the acts in question.”¹⁴

⁸ See e.g., The Atlantic, *Images of the Mass Kidnapping of Israelis by Hamas* dated 9 Oct. 2023; The Wall Street Journal, *Hamas Fighters’ Orders: ‘Kill as Many People as Possible’* dated 14 Oct. 2023; CNN, *Israel festival revelers shot at point-blank range* dated 10 Oct. 2023; New York Times, *Hamas Leaves Trail of Terror in Israel* dated 17 Oct. 2023; The Telegraph, *Hamas attack Israel’s Kibbutz Sufa* dated 16 Oct. 2023; WION, *Shocking, gruesome images of babies killed during Hamas attack released* dated 13 Oct. 2023; Human Rights Watch, *Israel/Palestine: Videos of Hamas-Led Attacks Verified* dated 18 Oct. 2023; Politico, *Israeli forensic experts identify tortured and burned bodies* dated 15 Oct. 2023; Fox News, *Hamas brutality against Israeli innocents shocks the world’s conscience* dated 11 Oct. 2023.

⁹ The Atlantic, *What Would Hamas Do If It Could Do Whatever It Wanted* dated 4 Aug. 2014; The Atlantic, *Understanding Hamas’s Genocidal Ideology* dated 10 Oct. 2023.

¹⁰ Hamas Covenant dated 1988, Intro., Arts. 7, 28.

¹¹ Hamas General Principles & Policies dated 2017 (emphasis added).

¹² NBC News, *‘Top secret’ Hamas documents show that terrorists intentionally targeted elementary schools and a youth center* dated 13 Aug. 2023; Haaretz, *Hamas Planned to Kill and Abduct Civilians, Documents Retrieved From the Deadly Assault Reveal* dated 14 Oct. 2023; New York Times, *The Secrets Hamas Knew About Israel’s Military* dated 13 Oct. 2023.

¹³ Senate Consideration of Treaty Document 81-15, *Text – Resolution of Ratification*.

¹⁴ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia*), Judgment dated 3 Feb. 2015, para. 148.

Equivocation on the nature of these atrocities is indefensible. And denying their existence is wrong.¹⁵ Accordingly, I call upon the Department of State to join me in issuing a clear and unambiguous declaration that Hamas has committed acts of genocide, crimes against humanity, and war crimes against the Jewish people and the State of Israel. Indeed, all parties to conflict must act in accordance with international law.

Following its deployment of mobile death squads to Israel, the name of Hamas will echo with *Einsatzgruppen* through the ages, as the essence of evil. And like Otto Ohlendorf at Nuremberg, Hamas and its members must similarly be held accountable for these atrocities. At such times, the United States should answer the “plea of humanity to law.”¹⁶ A formal determination by the State Department is a crucial reply toward that end.

Sincerely,



Michael T. McCaul
Chairman
House Foreign Affairs Committee

CC:

Rep. Gregory W. Meeks, Ranking Member
House Foreign Affairs Committee

¹⁵ On October 10, 2023, Moussa Abu Marzouk, a senior member of Hamas was “unwilling[] to admit that Hamas killed innocent civilians” and claimed that Hamas “obeys all international and moral laws.” The Economist, *A Hamas leader refuses to admit his group planned to kill civilians* dated 11 Oct. 2023. Such denials and assertions must be rejected.

¹⁶ Benjamin Ferencz, *Einsatzgruppen Trial, Case No. 9 (The United States of America vs. Otto Ohlendorf et al.)*, *Opening Remarks* dated 29 Sept. 1947.